

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 13-O-14391-LMA
)	(13-O-15441; 13-O-15778
MYAVA R. ESCAMILLA,)	13-O-17475)
)	DECISION AND ORDER OF
Member No. 268834,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Respondent Myava R. Escamilla was charged, in four matters, with: (1) improperly withdrawing from representation; (2) commingling personal funds in her client trust account; (3) not responding promptly to client inquiries; (4) not cooperating in a State Bar investigation; (5) not complying with a court order; and (6) committing an act of moral turpitude. She did not participate either in person or through counsel, and her default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the notice of disciplinary charges

¹ Pursuant to the court's July 2, 2014 order, the rules in effect prior to July 1, 2014 apply. Accordingly, unless otherwise indicated, all references to rules are to this source.

(NDC) and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition asking the court to recommend the attorney's disbarment.²

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on January 19, 2010, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 23, 2014, the State Bar properly served the NDC on respondent by certified mail, return receipt requested, to her membership records address. The NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Respondent had actual notice of this proceeding. On May 28, 2014, the deputy trial counsel (DTC) sent respondent an email to which was attached a copy of the NDC. The DTC and respondent had a telephone conversation on that same date about the matter during which respondent stated that she had received the email and was preparing responses to the pending charges. The DTC informed her that he would seek her default the next day but that she could "moot" the motion by filing a response to the motion within 15 days of its filing. Minutes later, respondent sent an email indicating that she was preparing a response.

Respondent did not file a response to the NDC. On May 29 and 30, 2014, the State Bar properly served and filed, respectively, a motion for entry of default on respondent by certified

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

mail, return receipt requested, to her membership records address. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent (rule 5.80) and reflecting that respondent had actual notice of this proceeding. The motion also notified respondent that, if she did not timely move to set aside her default, the court would recommend her disbarment. Respondent did not file a response to the motion, and her default was entered on June 16, 2014. The order entering the default was properly served on respondent at her membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order. She has remained inactively enrolled since that time.

Respondent also did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On December 19 and 23, 2014, the State Bar properly served and filed, respectively, the petition for disbarment on respondent by certified mail, return receipt requested, to her membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) respondent had not contacted the State Bar since July 16, 2014; (2) there are 13 other disciplinary matters pending against respondent; (3) respondent has no record of prior discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on January 14, 2015.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set

forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 13-O-14391 (The Miller Matter)

Count 1– respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by constructively terminating her employment after February 22, 2013 by not communicating with her client after that date about the litigation entitled *Miller v. City of Menifee, et al*, Riverside County Superior Court, case no. RIC1210613; not opposing a demurrer or appearing at the demurrer hearing; and not informing her client that she was withdrawing from employment.

Count 2 – respondent willfully violated section 6068, subdivision (i) (not cooperating in a disciplinary investigation) by not providing a substantive response regarding allegations of misconduct in the Miller matter as requested in the State Bar’s letters of September 3 and October 22, 2013, which she received.

Case Number 13-O-15441 (The Commingling of Funds Matter)

Count 3 – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (commingling personal funds in trust account) by issuing a check for personal expenses from her client trust account on August 19, 2013.

Count 4 – respondent willfully violated section 6068, subdivision (i) (not cooperating in a disciplinary investigation) by not providing a substantive response regarding allegations of misconduct in the commingling of funds matter as requested in the State Bar’s letters of November 26, 2013 and March 17, 2014, which she received.

Case Number 13-O-15778 (The *Garzona* Order)

Count 5 – respondent willfully violated section 6103 (not obeying a court order) by not paying plaintiff \$3,500 in attorney fees and costs as ordered by the court on April 26, 2013 in *Garzona v. Brower, et al.* Riverside County Superior Court case no. RIC205957.

Count 6 – respondent willfully violated section 6068, subdivision (i) (not cooperating in a disciplinary investigation) by not providing a substantive response regarding allegations of misconduct in the *Garzona* order matter as requested in the State Bar’s letters of November 25, 2013 and March 17, 2014, which she received.

Case Number 13-O-17475 (The *Pineda* Matter)

Count 7 – respondent willfully violated section 6068, subdivision (m) (not responding promptly to reasonable client inquiries) by not responding promptly to her client’s multiple reasonable status inquiries about a matter in which respondent had agreed to provide legal services, made between February 2013 and January 2014 and which respondent received.

Counts 8 and 10 – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (not maintaining client funds in trust account) by not maintaining in her trust account at least \$834.60 and \$10,721.16 of funds received on behalf of her client on July 8 and August 7, 2013.

Counts 9 and 11 – respondent willfully violated section 6106 (moral turpitude) by dishonestly or with gross negligence misappropriating for her own purposes funds that her client was entitled to receive, namely: (1) \$780.60, between July 8 and August 9, 2013; and (2) \$10,713.35, between August 7 and October 17, 2013.

Count 12 – respondent willfully violated section 6068, subdivision (i) (not cooperating in a disciplinary investigation) by not providing a substantive response regarding allegations of

misconduct in the Pineda matter as requested in the State Bar's letters of January 13 and March 17, 2014, which she received.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment is recommended. In particular:

(1) the NDC was properly served on respondent under rule 5.25;

(2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of her default, and respondent had actual notice of this proceeding, as the State Bar (a) filed and properly served the NDC on respondent by certified mail, return receipt requested, at her membership records address; and (b) on May 28, 2014, the DTC sent respondent an email to which was attached a copy of the NDC. They also had a telephone conversation on that same date about the matter during which respondent stated that she had received the email and was preparing responses to the pending charges. The DTC informed her that he would seek her default the next day but that she could "moot" the motion by filing a response to the motion within 15 days of its filing. Minutes later, respondent sent an email indicating that she was preparing a response;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Myava R. Escamilla be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

Restitution

It is also recommended that respondent make restitution to the following client:

1. To Mario Pineda in the amount of \$780.60 plus 10 percent interest per year from August 9, 2013; and
2. To Mario Pineda in the amount of \$10,713.35 plus 10 percent interest per year from October 17, 2013.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d)

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Myava R. Escamilla, State Bar number 268834, be involuntarily enrolled as an

inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: April _____, 2015

LUCY M. ARMENDARIZ
Judge of the State Bar Court